

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000896-MR

J. KEITH UPHOLSTERY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 09-CI-006381

KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION and TERRY J. SHELTON

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, MOORE, AND TAYLOR, JUDGES.

COMBS, JUDGE: Appellant, J. Keith Upholstery, appeals from an order of the Jefferson Circuit Court affirming the decision of the Kentucky Unemployment Insurance Commission (the Commission) to grant unemployment benefits to Terry J. Shelton. The Referee had found that Shelton was terminated for cause, a determination that would preclude Shelton from receiving unemployment benefits.

The Commission reversed the finding of the Referee and awarded benefits. J. Keith Upholstery now challenges the decision of the Commission as arbitrary, alleging that it failed to provide a reasoned analysis for reversing the Referee's finding that Shelton was terminated for cause. After our review, we affirm.

J. Keith Upholstery employed Shelton as a driver and part-time custodian beginning in 1987. On April 16, 2008, J. Keith Upholstery terminated Shelton's employment for excessive tardiness and absenteeism. Shelton filed for unemployment benefits, which were denied after an unemployment Referee found that Shelton had been discharged for statutory misconduct. In an order entered on September 4, 2008, the Commission reversed the decision of the Referee and remanded for a new hearing because Shelton had not been permitted to cross-examine witnesses.

Following a second hearing, a different Referee found that Shelton had been discharged for cause in a decision entered on February 26, 2009. On June 5, 2009, the Commission reversed the decision of the second Referee after concluding that the evidence of record did not support a finding of misconduct. The Commission found that Shelton was entitled to receive unemployment benefits. Upon appeal, the Jefferson Circuit Court affirmed the decision of the Commission in an order entered on April 18, 2012. This appeal followed.

J. Keith Upholstery argues that the decision of the Commission was arbitrary because it failed to provide a reasoned analysis for its reversal of the Referee's finding that Shelton had been discharged for good cause.

621, 624 (Ky. App. 2002), this Court set forth the applicable standard of review as follows:

The judicial standard of review of an unemployment benefit decision is whether the KUIC's findings of fact were supported by substantial evidence and whether the agency correctly applied the law to the facts. Substantial evidence is defined as evidence, taken alone or in light of all the evidence, that has sufficient probative value to induce conviction in the minds of reasonable people. If there is substantial evidence to support the agency's findings, a court must defer to that finding even though there is evidence to the contrary. A court may not substitute its opinion as to the credibility of the witnesses, the weight given the evidence, or the inferences to be drawn from the evidence. A court's function in administrative matters is one of review, not reinterpretation.

(Internal citations omitted). Kentucky Revised Statute[s] (KRS) 341.430(1) authorizes the Commission to “affirm, modify, or set aside any decision of a Referee on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it.” The Commission’s authority is somewhat unique in the administrative context. “Unlike a conventional appellate body, the Commission conducts a *de novo* review of applications.” *Burch v. Taylor Drug Store, Inc.*, 986 S.W.2d 830, 834 (Ky. App. 1998), abrogated on other grounds by *Kentucky Unemployment Ins. Comm'n v. Cecil*, 381 S.W.3d 238 (Ky. 2012). “[W]hile the Commission generally does not hear evidence directly from witnesses, it has the authority to enter independent findings of fact.” *Id.* It is not

required to defer to the Referee. “Necessarily, such authority allows the Commission to judge the weight of the evidence and the credibility of witnesses and to disagree with the conclusion reached by the Referee.” *Id.*

Therefore, contrary to the argument presented by J. Keith Upholstery, the Commission is not required to defer to the factual findings and legal conclusions of a Referee. J. Keith Upholstery cites *In re Appeal of Hughes & Coleman*, 60 S.W.3d 540, 543 (Ky. 2001), for the proposition that “an administrative agency either must conform with its own precedents or explain its departure from them.” However, the decision of the Referee is not a precedent for the Commission, which has the prerogative of disregarding a Referee decision and substituting its judgment for that of the Referee.

The Commission stated that the weight of the evidence did not support a finding of misconduct. The Commission further found that J. Keith Upholstery did not have a formal attendance policy in place. The Commission was persuaded by Shelton’s testimony that he had not received any written warnings. Shelton denied that he had been absent on all of the specific days that J. Keith Upholstery alleged, and J. Keith Upholstery failed to provide legible copies of Shelton’s timesheets. While there is conflicting evidence of record, this Court is not permitted to substitute its own judgment for the weight of the evidence and the credibility of witnesses. We conclude that the decision of the Commission was supported by substantial evidence.

We affirm the order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

George R. Carter
Louisville, Kentucky

BRIEF FOR APPELLEE:

James C. Maxson
Commonwealth of Kentucky,
Education and Workforce
Development Cabinet,
Office of Legal and Legislative
Services
Frankfort, Kentucky